



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 31 March 2014
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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ROSHCON (PTY) LTD v ANCHOR AUTO BODY BUILDERS CC & OTHERS

This court dismissed an appeal by Roshcon (Pty) Ltd against Wesbank (Firststrand Bank) wherein Roshcon claimed ownership of five Nissan trucks.

The salient facts are Nissan Diesel a manufacturer and supplier of trucks had a supplier agreement with Wesbank and Wesbank in turn had a floor plan agreement with Toit's commercial (Pty) Ltd, (an authorized dealer in vehicles). In both agreements ownership in and to the vehicles was reserved for Wesbank until such time that the dealer had paid for the vehicles.

Toit's had ordered the five trucks from Nissan Diesel for purposes of selling them to Roshcon. Wesbank financed the transaction. The trucks were delivered to Toit's' agent, Anchor, which was to modify the trucks on behalf of Roshcon. Roshcon took delivery of two of the trucks and later took delivery of the three trucks – though did not remove them from

Toit's agent.

Roshcon paid Toit's in full for the trucks. In the meanwhile Toit's was placed under liquidation before it could pay Wesbank for the trucks. When Roshcon claimed the vehicles from Toit's agent, it refused to part with possession thereof. The reason being that Wesbank instructed them not to release the trucks as it claimed ownership.

Roshcon claimed the trucks as the true owner – because it contended that the supplier and floor plan agreements were a disguise or a simulation. It contended that the transaction between Wesbank and Toit's was a loan against the security of the trucks without Wesbank having to take possession thereof. Roshcon contended that Wesbank was securing an advantage which otherwise the law would not allow. Alternatively Roshcon contended that Wesbank was estopped from claiming ownership.

This court concluded that there were good and sound reasons for Nissan Diesel, Wesbank and Toit's to structure their transactions in the way they did. That it looked at the facts of the case and not to a particular legislation to find the intention of the parties. It further said that a transaction devised for commercial purposes, if the parties honestly intend it to have effect according to its tenor, is perfectly legitimate and cannot be said to be a simulation. It also dismissed the alternative claim of estoppel because Roshcon failed to satisfy the court that Wesbank ever made any representations to Roshcon.